

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 1:05 CR 143
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	
LENELLE GRAY,)	MEMORANDUM OPINION
)	AND ORDER
Defendant.)	

This matter comes before the Court upon Defendant, Lenelle Gray's Motion seeking a reduction in his sentence based on changes to the sentencing guidelines that affect the base offense levels related to crack cocaine convictions; and, based on amendments to the sentencing guidelines affecting the calculation of a criminal history category by eliminating added points for committing another crime while on probation, and within two years of being released from prison for another offense. (ECF #80). A previous motion seeking a reduction based on the amendments affecting the calculation of criminal history points was denied because the amendment was not made retroactive.

The Fair Sentencing Act of 2010 was passed into law on August 3, 2010, but was not made retroactive at that time. Pursuant to a June 30, 2011 decision by the United States Sentencing Commission, U.S.S.G. § 2D1.1 as amended, the Fair Sentencing Act will become retroactive effective November 1, 2011, assuming Congress approves the Guidelines Amendment. Therefore, although Mr. Gray may possible qualify for a reduction, his current motion is premature as the decision on retroactivity is not final and effective.

Pursuant to 18 U.S.C. § 3006A, the Public Defender's Office has filed a petition for appointment in this case, on behalf of Mr. Gray. (ECF #83). It is the Court's understanding that this inmate is not currently represented by private counsel and that he is not presently able to hire private counsel for this purpose. Therefore, this motion is GRANTED. The Court hereby appoints the Office of the Federal Public Defender to advise Mr. Gray in determining his eligibility for a sentence reduction pursuant U.S.S.G. § 2D1.1, and to assist him in preparing a future motion for reduction of sentence if he is deemed eligible after the Guidelines Amendment become retroactive. IT IS SO ORDERED.

/s/Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: July 13, 2011